

ORIGINAL

APPLICATION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY

03-70784

United States District Court	Eastern District of Michigan	PAUL D. BORMAN
Name: SAMUEL BAINS	Inmate Number: 134408	Case Number (official use only) MAGISTRATE JUDGE CARLSON
Place of Incarceration:	COOPER STREET CORRECTIONAL FACILITY 3100 COOPER STREET JACKSON, MI 49201	
Name of Petitioner (Include the name under which you were incarcerated) (authorized person having custody over you)	Name of Respondent SAMUEL BAINS vs. THOMAS WARDIN, PHILLIPS R.	
The Attorney General of the State of:		

PETITION

1. Name and location of court which entered the judgment of conviction under attack: THIRD JUDICIAL CIRCUIT OF MICHIGAN, 610 FRANK MURPHY HALL OF JUSTICE 1441 ST ANTOINE
2. Date of judgment of conviction: 2/22/97 GUILTY PLEA
3. Length of Sentence: #3 TO 15 YEARS
4. Nature of offense involved (all counts): RETAIL FRAUD AND FOURTH HABITUAL OFFENDER RETAIL M.C.L.A. 750360 C DOCKET 96-7813-01 ENHANCE WITH OR FROM DOC. 88-89719 FH JUDGE DAVID BREACK, NO JURISDICTION WITH ASSIGNMENT SENTENCE 1 YEAR SUSPEND & 1 TO 15 4TH HABITUAL OFFENDER SAME DOCKET
5. What was your plea? (check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere

If you entered a guilty plea to one count of indictment, and a not guilty plea to another count or indictment, give details: _____

6. If you pleaded not guilty, what kind of trial did you have? (check one)

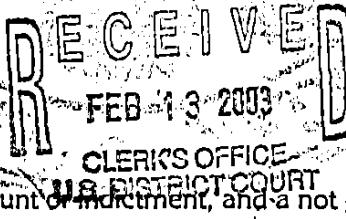
- (a) Jury
- (b) Judge only

7. Did you testify at the trial?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No



9. If you did appeal, answer the following:

(a) Name of court: MICHIGAN COURT OF APPEALS

(b) Result: AFFIRMED CONVICTIONS

(c) Date of result and citation, if known: OCTOBER 28, 1997

(d) Grounds raised: SAME, EXHAUSTED UNDER ROSE V LUNDY 102 S.C.T. 1198

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court: michigan SUPREME COURT Pocket 68111

(2) Result: LEAVE TO APPEAL DENIED

(3) Date of result and citation, if known: MICHCT. APP. MAY 28, 1997

(4) Grounds raised: SAME
INEFFECTIVE ASSISTANCE OF COUNSEL, JURISDICTION, ARRIGNMENT

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court: U.S. SUPREME COURT

(2) Result: NOT PETITIONED

(3) Date of result and citation, if known: NOT PETITIONED

(4) Grounds raised: NOT PETITIONED

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court: OAKLAND COUNTY CIRCUIT SIXTH JUDICIAL CIRCUIT

(2) Nature of proceeding: MCR 6.500 RELIEF FROM JUDGMENT

(3) Grounds raised: DOUBLE JEOPARDY

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes No

(b) As to any second petition, application, or motion give the same information:

(1) Name of court: OAKLAND COUNTY CIRCUIT SIXTH JUDICIAL CIRCUIT

(2) Nature of proceeding: MCR 6.500 RELIEF FROM JUDGMENT
DOUBLE JEOPARDY

(3) Grounds raised: FRAUD ON THE COURT , LACK OF JURISDICTION FOR I WAS SENTENCE TO RAP , WITHOUT THE ARRAIGNMENT ON 1-15 88-89719FH NEWLY DISCOVERY OF EVIDENCE , JANURARY 10,2002 MICHIGAN SUPREME COURT TRANSCRIPTS I WAS DENIED TRANSCRIPT ON WIT AND A YEAR LATER WAS MAIL FROM SUPREME COURT .

(4) Did you receive an evidentiary hearing on your petition, application, or motion?
 Yes No

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
 (2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application, or motion explain briefly why you did not: LATE APPEAL , FOR REASON OF M.B.O.C NOT MAILING ,

FILE A COMPLAINT IN CASE NO. 00-2369 FILED FEB 09, 2001 SIXTH CIRCUIT .

ARRAIGNED BY MAIL ON HABITUAL FOURTH , AFTER 277 DAY SENTENCE AGAIN DOUBLE JEOPARDY FORGED MY NAME TO WAIVER OF ARRAIGNMENT BY ATTORNEY OF RECORD . NEWLY DISCOVERY OF EVIDENCE OF TRANSCRIPT OF WAIVER OF ARRAIGNMENT WITH HIS SIGNATURE .

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds, and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (l) or any of these grounds:

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by the use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

(A) Ground one: NEVER ARRAINED FOR FRAUDULENTLY SIGNING MY NAME ON A WAIVER ARRAIGNMENT 277 DAY AFTER ARRESTED , BEYOND 21 DAYS FOR HABITUAL OFFENDER STATUE

Supporting FACTS (tell your story *briefly* without citing cases or law: FIRST FILE IN MAR 28,98

then ON WIT HABEAS CORPUS CIVIL NO98-40240-FL RESUBMITED IN CASE 99CV-74594-DT

DISTRICT ERROR , & FILE DESTROY IN FIRE , NEWLY DISCOVERY OF EVIDENCE IN TRANSCRIPT FROM THE OFFICE OF SUPREME COURT ADMINISTRATION ON JANUARY 10,2002 that I WAS NOT UNDER JURISDICTION OF THE COURT IN CASE 88-89719 AND 96-7813-01 FOR LACK OF ARRAIGNMENT
DAVID A BINKLEY FORGED MY NAME TO WAIVER OF ARRAIGNMENT MY MAIL 0437/93

OPTION GRANT BY JUDGE PAUL LGADOLA 98-CV-40240-f1 on EXHAUSTED CLAIM UNDER ROSE .
NO COMPILING RULING TO DISMISS Nowaczuk v. Andrew 299 F3d 69 (2002)

4. At sentencing: BY ATTORNEY OF RECORD MELINDA CAMERON W SIX MILE OFFICE
HER PHONE NUMBER IS (313) 534 -8939 IN DOCKET 96-7813-01

5. On appeal: DANA D CARRON , DID OMITTED THE ISSUE , EXCEPT I DID FILE
CONCERNING THE ATTORNEY CONFESS TO FRAUNLTLY SIGNING MY SIGNATURE IN CASE 93-
153743 6. In any post-conviction proceeding: _____

7. On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

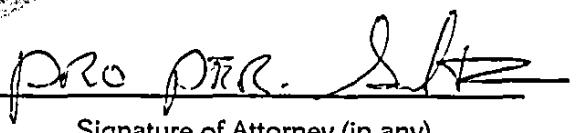
1. If yes, give name and location of court which imposed sentence to be served in the future:

2. Give date and length of the above sentence:

3. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, Movant prays that the Court grant him all relief to which he may be entitled in this proceeding.



Signature of Attorney (in any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12-11-02

Date



Signature of Movant

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL BAINS ,
PETITONER,

CIVIL ACITON#-----

v

T. G. PHILLIP, WARDEN ,
-----/

MOTION FOR EVIDENTIARY HEARING , &
[FRCP]RULE §26(g)(2)(A) A) (C) , AND 18§USC3006 .

NOW COMES SAMUEL BAINS, PRO. SE . PURSUANT TO 28 U.S.C. §636(b)
UNDER 28 U.S.C. §2254 . THIERIN MOVE THIS HONORABLE COURT TO GRANT
HIM AN EVIDENTIARY HEARING , TO COMPEL DISCOVERY ,AND APPOINTMENT
OF ATTORNEY ON NEWLY DISCOVER OF EVIDENCE .DATE TO BE SET BY THE
COURT , RULE 6 FEDERAL RULES OF CIVIL PROCEDURE.

1. THIS HONORABLE COURT HAS JURISDICTION OVER THE INSTANT
MOTION PURSUANT TO 28 U.S.C. §636(b) & RULE 60 (b)(A)
CLERICAL MISTAKES. DURING THE PENDENCY OF AN APPEAL (b)
MISTAKES ; INADVERTENCE ; EEXCUSABLE NEGLECT; NEWLY DIS-
COVERED EVIDENCE ; FRAUD , ON MOTION AND UPON SUCH TERMS
RESENTATIVE FROM A FINAL JUDGMENT , ORDER , OR PROCEEDING
FOR THE FOLLOWING REASONS:

- 1 OF 1 MISTAKE ,
2. NEWLY DISCOVERED THE MOTION SHALL BE MADE WITHIN A
REASONABLE TIME , AND FOR REASONS (1)(2)AND (3)NOT MORE
THAN ONE YEAR AFTER THE JUDGMENT , ORDER , OR PROCEEDING
WAS ENTERED OR ACTAKEN .

(5)

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL BAINS, PETITIONER.

V

CIVIL ACTION

T.G. PHILLIP, WARDEN

RULE F 26 PLAINNING FOR DISCOVERY .

(F) MEETING OF PARTIES ; PLANNING FOR DISCOVERY . EXCEPT IN ACTIONS EXEMPTED BY LOCAL RULE OR WHEN OTHERWISE ORDERED , THE PARTIES SHALL AS SOON AS PRACTICABLEAND IN ANY EVENT AT LEAST 14 DAYS BEFORE SCHEDULING CONFERENCE IS HELD OR A SCHEDULING ORDER IS DUE UNDER RULE 16 (B) MEET TO DISCUSS THE NATURE AND BASIS OF THEIR CLAIMS AND DEFENSES AND THE POSSIBILITIES FOR A PROMPT SETTLEMENT OR RESOLUTION OF THE CASE , TO MAKE OR ARRANGE FOR THE DISCLOSURES REQUIRED BY SUBDIVISION (A) (1) , AND TO DEVELOP A PROPOSED DISCOVERY PLAN . THE PLAN SHALL INCLUDE & INDICATE THE PARTIES " VIEW S AND PROPOSALS CONCERINING:

(1) THE SUBJECT ON WHICH DISCOVERY MAY BE NEEDED , WHEN DISCOVERY SHOULD BE COMPLETED, AND WHETHER DISCOVERY SHOULD BE CONDUCTED IN PHASES OR BE LIMITED TO OR FUCUSED UPON PARTICULAR ISSUE; under 16 (b)&(c)(4) ANY OTHER ORDERS THAT SHOULD BE ENTERED BY THE COURT UNDER SUBDIVISION (C) OR UNDER RULE 16 (b) & (C).

[I DECLARE UNDER THE PENALTY OF PERJURY THE FOREGOING]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SAMUEL BAINS , PLAINTIFF,

v

CIVIL ACTION#-----

DAVID BINKLEY, DEFENDANT ,

RULE 26 , GENERAL PROVISIONS GOVERNING
DISCOVERY DUTY OF DISCLOSURE

(1) A COPY OF , OR A DESCRIPTION BY CATEGORY AND LOCATION OF , ALL DOCUMENTS, DATA COMPILATION, SAN TAGIBLE THINGS IN THE POSSESSION , CUSTODY, OR CONTROL OF THE PARTY THAT ARE RELEVANT TO DISPUTED FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS ;

(2) DISCLOSURE OF EXPERT TESTIMONY PURSUANT TO RULE 702 & 703 OF THE FEDERAL RULE OF EVIDENCE . ALSO 705 . DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION . THE EXPERT MAY IN ANY EVENT BE REQUIRED TO DISCLOSE THE UNDERLYING FACTS OR DATA ON CROSS-EXAMINATION .

(B) SUMMONS AND COMPLAINT , FILE UNDER JUDGE RUDY J. NICHKE, IN CASE DOCKET 93 -453743 SUMMARY DISPOSITION BAINES V BINKLEY THIS STATEMENT CERNING SIGNING , "ON JURISDICTION CALLED WAIVER OF ARRAIGNMENT. THE STATEMENT OF ATTORNEY , DAVID BINKLEY , I DID SIGN YOUR NAME TO GET YOU OUT OF A HOLDING CELL .

WITNESS : COURT CLERK , RECORDER IN JUDGE RUDY NICHOLS COURT
JUDGE RUDY NICKELS , SIXTH JUDICIAL COURT 1200 N. telegraph
DEPT 404 .



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

§RULE 16 DISCOVERY AND INSPECTION PLAN [F.R.CP.]§

DEFENANT ATTORNEY OF RECORD DAVID A BINKLEY (P31643)
ADDREES ATTORNEY , DAVID BINKLEY A, P31643
COX HODGMET & GIAMARCO,,PC.
101 W. BIG BEAVER RD F. 10
TROY , MICHIGAN 48084

WE HEREBY COMMAND YOU THAT ALL BUSINESS AND EXCUSES CEASING
YOU TO APPEAR IN PROPER PERSON , BEFORE THE DISTRICT
COURT MAGISTRATE JUDGE FOR THE UNITED STATES COURT HOUSE
, TO BE HELD IN AND FOR THE PLAINTIFF SAMUEL BANS , DISCOVERY
UNDER RULE 16 , IN THE COUNTY OF WAYNE ON _____AT_____
AM/PM.) TO TESTIFY AND TO THE TRUTH OF SIGNING A WAIVER
OF ARRAIGNMENT BY MAIL , IN CASE 88-89719FH HABITUAL OFFENDER
ARRAIGNEDMENT . IN OAKLAND COUNTY CIRCUIT COURT ON _____
& FILE DOCUMENT (S) OF ATTORNEY GRIEVANCE COMMISSION FILE
0427-93 AND TRANSCRIPT WITH STATEMENT MADE MY YOU CONERNING
FORGERY , IN DOCKET CASE 93-453743 JUDGE RUDY J. NICHOLS
COURT JUNE 16, 1993 SUMMARY DISPOSITION . THIS MATERIAL
IS BASIC OF ILLEGAL SENTENCE , AND LACK OF JURISDICTION
IN CASE 96-7813-01 ENHANCE FROM A DUE PROCESS VIOLATION
IN CASE 88-89719FH JUDGE DAVID BRECK . WHEREFOR HE STAND
INDICTED AND THAT YOU BRING WITH YOU AND PRODUCED AT THE
TIME AFOREMENTIONED SPECIFIED ITEMS ABOVE . CONCERNING
THE PREMISE AND THAT YOU ARE NO TO OMMITED UNDER THE PENALTY
OF 50,000 DOLLAR SANCTION PURSUANT TO RULE 37 FRCP


SAMUEL BAINS

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN
DIVISION

SAMUEL BAINS , PETITIONER,

v

civil ACTION

T.G. LPHILLIP , WARDEN.

BREIF IN SUPPORT

PURSUANT TO RULE 26 FEDERAL RULE OF CIVIL PROCEDURES
GENERAL PROVISIONS GOVERNING DISCOVERY ; DUTY OF DISCLOSURE.
(E) SUPPLEMENTATION OF DISCLOSURES AND RESPONSES . A PARTY
WHO HAS MADE A DISCLOSURE UNDER SUBDIVISION (A) IF THE PARTY
LEARNS THAT IN SOME MATERIAL RESPECT THE INFORMATION DISCLOSED
IS INCOMPLETE OR INCORRECT AND IF THE ADDITIONAL OR CORRECTIVE
INFROMATION HAS NOT OTHERWISE BEEN MADE KNOWN TO THE OTHER
PARTIES DURING THE DISCOVERY PROCESS OR IN WRITING . WITH
RESPECT TO TESTIMONY OF AN EXPERT FROM WHOM A REPORT IS
REQUIRED UNDER SUBDIVISION (A) (2) (B) THE DUTY EXTENDS
BOTH TO INFORMATION CONTAINED IN THE REPORT AND TO INFORMATION
PROVIDED THROUGH A DEPOSITION OF THE EXPERT , AND ANY
ADDITIONS OR OTHER CHANGES TO THIS INFORMATION SHALL BE
DISCLOSED BY THE TIME THE PARTY'S DISCLOSURES UNDER RULE
26 (A) (3) ARE DUE.

(1)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUELEBAINS PETITIONER,

v

TYG PHILLIP, WAEDEN, RESPONDENT.

STATEMENT OF FACT

DISCUSSION

THE PROVISIONS OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 ("AEDPA") PUBL. L. NO. 104-132, 110 STAT. 1214 (APR. 24, 1996), GOVERN THIS CASE BECAUSE PETITIONER FILED HIS HABEAS CORPUS AFTER THE AEDPA'S EFFECTIVE DATE. SEE LINDN V. MURPHY, 521 U.S. 320, 336, 117 S. CT. 2059, 138 F.3D 481 (1997). AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT SHALL NOT BE GRANTED WITH RESPECT TO ANY CLAIMS THAT WAS ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDING (S) UNLESS THE ADJUDICATION OF THE CLAIM-
(1) WAS CONTRARY TO ..CLEARLY ESTABLISHED FEDERAL LAW,
, AS DETERMINED THE BY SUPREME COURT OF THE UNITED STATES OR (2) INVOLVED AN UNREASONABLE APPLICATION OF ..CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES. (3)(UNREASONABLE MEANS DEVOID OF RECORD SUPPORT OR OFFENSIVE TO EXISTING PRECEDENT"
OR ARBITRARY TO THE POINT OF BEING OUTSIDE THE UNIVERSE OF PLAUSIBLE CREDIBLE OUTCOME)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SAMUEL BAINS , PETITIONER

v

CIVIL ACTION #

T.G. PHILIPS , EARDIN RESPONDENT

BRIEF IN SUPPORT

FOR WRIT OF HABEAS CORPUS

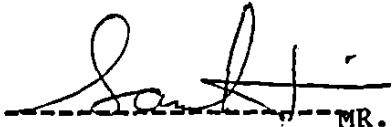
THE FEDERAL JUDGE IDENTIFIED THE MITIGATING EVIDENCE THAT COUNSEL HAD FAILED TO INTRODUCE AND REJECTED THE ARGUMENT THAT SUCH FAILURE TO FILE ON APPEAL THE ATTORNEY . BREACH OF PLEA AGREEMENT , CAUSE PREJUDICE . WHEN DAVID BINKLEY PROMISE ARRAIGNMENT BY MAIL , AND TREATMENT IN DRUG PROGRAM CALLED RAP. HE BREACH A AGREEMENT WITH PROSECUTOR OFFICE . WHEN HE SIGN MY NAME WITHOUT BY PRESENCE OR SIGNATURE . THE STATE'S BREACH OF AGREEMENT CONCERNING SENTENCE RECOMMENDATION ON A GUILTY PLEA WAS INADVERTENT DID NOT LESSEN ITS IMPACT . WHEN STATE FAILDED TO KEEP A COMMITMENT CONCERNING SENTENCE RECOMMENDATION ON A GUILTY PLEA , THE UNITED STATES SUPREME COURTS TO DECIDE WHETHER CIRCUMSTANCE OF CASE REQUIRES ONLY THAT THERE BE SPECIFIC PERFORMANCE OF THE AGREEMENT ON THE GUILTY PLEA , OR WHETHER CIRCUMSTANES REQUIRED THAT PETITIONER BE GRANTED OPPOTYUNITY TO WITHDRAW PLEA .

SP

UNITED STATES DISTRICT COURT

SENTENCE ANOTHER TIME FOR THE SAME SENTENCE , WITHOUT A HEARING AND WITHOUT ARRAIGNMENT BY MAIL AND I DID NOT SIGN FOR WAYER THE PROSECUTOR PROMISE WAS UNKEPT SEE SANTOBELLO V NEWYORK CITE AS 92 S.CT. 495 . . this issue WAS FILE ALSO IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT UNDER DOCKET 00-2369 ,FILED FEB . 09, 2001 ACCORDINGLY IT IS ORDERED THAT THE APPEAL IS DISMISSED FOR LACK OF JURISDICTION . THE FEDERAL JUDGE HONORABLE JOSEPH M. HOOD , UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY SITTING BY DESIGNATION . MY STATEMENT THAT I SHOULD BE ABLE TO APPEAL THE MATTER OF THE FIRE , AT G MENNEN WILLIAM BUILDING CONCERNING THIS CLAIM. THAT WAS OMITTED IN THE ORIGINAL FILING OF CIVIL NO 98 -40240 FL HONORABLE PAUL V GADOLA UNITED STATES DISTRICT JUDGE ,PAGE 5 III ORDER IT IS FURTHER ORDERED THAT PETITIONER'S MOTION TO AMEND AND ATTACH EXHIBITS IS GRANTED . THIS WAS THE ISSUE AS I SETFORTH NOW , CONCERNING PROMISE ARRAIGNMENT BY MAIL AN UNKEPT PLEA .THAT ARE NOT SETFORTH IN §2254 BUT WAS OMITTED IN ERROR SEE ATTACHMENT OF EXHIBIT AND NEWLY DISCOVERY OF EVIDENCE . FROM THE UNITED STATES SUPREME COURT , ON JANUARY 10, 2002 ALSO MARCH 28 , 2002 WHEN RICHARD M. LYNCH CHIEF COURT OPERATIONS MAIL NEWLY DISCOVERY OF EVIDENCE OF EXHAUSTED CLAIM OF ARRAIGNMENT BY MAIL & FRAUDENTLY SIGNING , WAYER OF ARRAIGNMET MY ATTORNEY FILE A RECORD OF ARRAIGNMENT WITHOUT MY KNOWLEDGE . ON A UNKEPT PROMISE OF TREATMENT ,SEE FAY V NOIA 83 S.CT. 822 102 S.CT 1198 Rose V Lundy & NOWACZYK V. WARDEN 299 F3d 69 (CA1 2002)

PAGE TWO .


MR.

MR SAMUEL BAINS

SAMUEL BAINS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT MICHIGAN

SAMUEL BAINS , PETITIONER ,

T.G. PHILLIPS , WARDIN , RESPONDENT, ET. AL

PROOF OF SERVICE

STATE OF MICHIGAN)

)ss

COUNTY OF JACKSON)

THE UNDERSIGNED CERTIFIES THAT ON THE DATE SET FORTH
BELOW PETITIONER PRO PER. SERVED A COPY OF THE FOLLOWING PAPERS
UPON RESPONDENT , IN THE ABOVE ACTION BY MAILING A COPY BY
FIRST CLASS MAIL AS FOLOWING :

1. NEWLY DISCOVERY OF EVIDENCE , EXHIBIT SUPREME COURT .
2. PETITION UNDER 28 USC§2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY .
3. STATEMENT OF FACT , BRIEF IN SUPPORT
4. ORDER UNITED STATES COURT OF APPEALS
- 5.
- 6.

[I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS
TRUE AND CORRECT TO THE BEST OF KNOWLEDGE & WISDOM]

SAMUEL BAINS

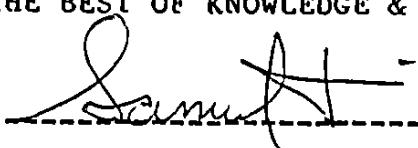


EXHIBIT A

united state district court
easter district of micohigan
southern division

SAMUEL BAINES 134408
PETITIONER,

v.

MARTIN MEKEL, RESPONDENT,

CIVIL NO . 98.CV-40240-FL

HONORABLE PAUL V GADOLA

MOTION TO AMEND
ANNEXION EXHIBIT

EXHIBIT A OF A

PURSUANT TO RULE IS AMENDED AND SUPPLEMENTAL PLEAD.

(B) AMENDMENTS TO CONFORM TO THE EVIDENCE.

(B) EVIDENCE THUS : SEE ATTACHMENT OF ANNEX EXHIBITS AS LISTED AS
FOLLOWS... ALSO HECK V HUMPHREY ET .AL. 512 U.S. 477 ,129 L.ED. 2d
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ANNEXED EXHIBIT

PURSUANT TO RULE 15 AMENDED AND SUPPLEMENTAL PLEAD.

(1) ATTORNEY GRIEVANCE COMMISSION , FILE 0437/93 AND DATE OF CASE
CLOSEDING APRIL ,3, 1995 . AS EXHIBIT (A) AND A -ONE .

(2) OPINION AND ORDER DENYING DEFENDANTS MOTION FOR POST JUDEMENT
RELIEF ,. DATE SEP. 29 , 1997 HON . DAVID BRECK CIRCUIT COURT JUDGE, AS
LISTED EXHIBIT B AND EXHIBIT B 1 .

(3) DEPARTMENT OF STATE POLICD , DOCUMENT OF ILLEGAL DETENTION JULY
6 ,1998 JULY . 1998 AND 8 , AS EXHIBIT (C) AND C ONE) JULY 6,1998
ILL EGAL .

(4) SUBPOENA DUCES TECUM REQUEST FOR PRODUCTION OF DOCUMENTS. DATE
JUNE 24,1998 . PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET. DATE
: FOR WAIVER OF FEES AND COSTS JUNE 34,1998 HEARING

NOTARY SEAL: _____

SUBSCRIBED AND SWORN BEFORE ME, : 8-30-99

NOTARY PUBLIC THIS 30th DAY __ DAY OF JULY 1998.

August 1999

NOLA M. FETTIG M. M. Fettig
Notary Public, Washtenaw County, MI
My Commission Expires Jan. 19, 2001
Acting in Lenawee County, MI

S. A. H.
MAIL TO ASS-US ATTORNEY
12-21-98

A EXHIBIT A OF 187 BAIN (SAMP)
of Lack of Jurisdiction and Jurisdiction
PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

PhB-B, 3/2003

United States District Court		District EASTERN
Name SAMUEL BAINES		Prisoner No. 134408
Confinement Riverside Correctional Facility 777 West Riverside Dr. Tonia, Mich 48846		
Name of Petitioner (include name under which convicted) Samuel Baines #134408		Name of Respondent (authorized person having custody of petitioner) v. Stanley Adams, Warden
The Attorney General of the State of: Michigan		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack Circuit Court, 1200 No. Telegraph Rd., Pontiac, Mich 48341-0404		
2. Date of judgment of conviction 9-24-96		
3. Length of sentence 3 to 15 Years		
4. Nature of offense involved (all counts) Retail Fraud and Fourth Habitual RETAIL FRAUD 1 750 356c 03 to 15 OFFENSE DATE FOR GUILTY PLEA 9/24/96 AND FOURTH DEGREE WITH THE ENHANCEMENT OF 96-8713-01 IN O'BRIEN COURT		
RECORD COURT.		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: 		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

9. If you did appeal, answer the following:

(a) Name of court Michigan Court Of Appeals

(b) Result Conviction Affirmed

(c) Date of result and citation, if known _____

Same as herein

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court Michigan Supreme Court

(2) Result Leave to appeal Denied

(3) Date of result and citation, if known _____

(4) Grounds raised Same as herein

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

0241 (Rev. 5/85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF MICHIGAN
(2) Nature of proceeding OPINION AND ORDER DENYING DEFENDANT MOTION FOR
RELIEF OF JUDGEMENT RULE 6.500

(3) Grounds raised SAME AS IN 2254, PETITION UNDER 28.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you will be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea. *2 5 PM 6*
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

Petitioner's Conviction was obtained in violation

A. Ground one: _____
of U.S Const Fourteenth Amendment Due Process Clause

Supporting FACTS (state briefly without citing cases or law) Petitioner was never
Arraigned on prior conviction of 88-89719-FH used to Supplement/Enhance
predicate conviction of Retail Fraud in Oakland County Circuit Case
No. 96-8713-01 BEING ENHANCED TO 88-89719-FH IN JUDGE O BRIEN COURT
RECORD COURT OF THE CITY OF DETROIT.

B. Ground two: Petitioner was denied Due Process Of Law in violation of U.S. Const
in violation of Fourteenth Amendment. *+*

Supporting FACTS (state briefly without citing cases or law): Petitioner was denied jail
credit time of 277 days spent while incarcerated prior to final judgement
and sentence to R.A.P. program where later termination of program re-
sulted in imprisonment. BEING NEVER ARRAINGED IN CIRCUIT COURT FOR
FOR REASON OF ATTORNEY FORGERY OF MY SINGTURE AT ARRINGMENT ON INFOR-
MATION IN OAKLAND , ATTORNEY DAVID A. BINKLEY, 0437/93.

Attorney G. on Amended.

C. Ground three: Petitioner was denied the effective assistance of of Counsel in violation of the Sixth and Fourteenth Amendment of U.S.

Constitution Supporting FACTS (state briefly without citing cases or law): ATTORNEY GRIEVANCE COM FILE 0437-93 (313)338-9960. DAVID BINKLEY P-31643 ACTING AS AN OFFICER OF THE COURT, DID FORGE, OR FRAUDULENTLY SIGNED BY SIGNATURE WITHOUT MY PERMISSION. Petitioner and Appellate attorney failed to object or raise the within enunciated issues but for which petitioner would have had a probable different result in the outcome.

D. Ground four Petitioner was denied his liberty without Due Process and his fifth amendment rights against Double Jeopardy was violated

01.26.89 Supporting FACTS (state briefly without citing cases or law): Petitioner was sentence twice for the same crime where on 1/19/89 petitioner was sentence to 1yr suspended to R.A.P. program, afterward, Petitioner was sentence once again for the same crime to from 1-15 yrs imprisonment as fourth habitual in 10/89 related to conviction for retail fraud. THENCE : YOU CAN T USE A TREATMENT PROGRAM FOR THE ENHANCEMENT UNDER MENTAL HEATH CODE. THUS : A CASE WAS VIOLATION OF MY DUE PROCESS RIGHTS WITHOUT ARRIGNMENT IN CIRCUIT COURT OF OAKLAND COURT FOR REASON OF FORGERY.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing TERRY PRICE, PUBLIC DEFENDER

(b) At arraignment and plea _____

O 241 (Rev. 5/85)

(c) At trial _____

(d) At sentencing MELINDA CAMERON 26085 W. SIX MILE (313)534-8939

(e) On appeal DANA BRUCE CARRON, 65 CADILLAC SQUARE, SUITE 2200
DETROIT, MICH 48226-2888

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

PRO-PAUL

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Petitioner

UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

SAMUEL BAINS, PETITIONER,

V

T.G. PHILLIP WARDEN,

SAMUEL BAINS 134408
(JCS) CORRECTIONAL FACILITY
COOPER STREET CORRECTIONAL
3100 COOPER STREET
JACKSON , MI 49201

PETITIONER'S APPENDIX

DATE: JANURARY , 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN
DIVISION

SAMUEL BAINS , PETITIONER,

CIVIL #-----

v

JUDICIAL OFFICER

T.G. PHILLIP WARDEN,

CONTENT-OF-APPENDIX-

EXHIBIT A , MOTION FOR EVIDENTIARY HEARING ,NEWLY DISCOVERY
OF EVIDENCE ,RULE 26 g(2) A,C 18 U.S.C. 3006
EXHAUST CLAIM ,OF HONORABLE PAUL V .DADOLA IN
CASE 98 CV-40240 ANNEX ,EXHIBIT -MOTION
GRANTED EXHIBIT A OF (A) UNDER RULE 26 (G) 2
NOWACZYKV V WARDEN NEW NAMPSHIRE STATE PRISON
299 F. 3d 69 (MISTAKE) FILE PETITIONER UNDER
§28 U.S.C. 2254 PAGE 5,B COERCED CONFESSING
WITH UNKEPT PLEA BASIC OF BREACH OF CONTRACT
OF PLEA AGREEMENT ...

EXHIBIT A CONT...

UNITED STATE SENATE , PAGE ONE

EXHIBIT B . PAGE TWO

NOTICE OF FILING PARTIAL RULE 5 , MATERIAL DISTROYED IN FIRE

EXHIBIT C.

93 -453743 JUDE RUDY J. NICHOLS SUMMONS PAGE THREE

EXHIBIT D

SIXTH CIRCUIT OFFICE OF ADMINSTRATOR NEWLY DISCOVERY PAGE FOUR

EXHIBIT E

AFFIDAVIT STATEMETN OF FACT CIVIL DOCKET 00.2369 PAGE FIVE

EXIBIT F. BRIEF IN SUPPORT 00.2369 PAGE SIX

UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT PAGE (7)

00.2369 MANDATE .

DEBBIE STABENOW
MICHIGAN

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-2204

EXHIBIT B

June 5, 2002

Samuel Baines #134408
Pugsley Correctional Facility
7401 Walton Road
Kingsley, Michigan 49649

Thank you . . .

. . . for contacting me regarding the Michigan Department of Corrections. I appreciate you taking the time to share your concerns with me.

Since the issue you raise is under the jurisdiction of the Michigan State Legislature, I have forwarded your letter to the Michigan Legislative Corrections Ombudsman. This office was established to serve as a liaison between the public and the Michigan Department of Corrections.

Thank you again for contacting me. If you have questions or need further assistance on this issue, please contact your State Senator from your home district.

Sincerely,



Debbie Stabenow
United States Senator

DS:sps
cc: Michigan Legislative Corrections Ombudsman

PLEA AND ARRAINGMENT

SENATE BILL 536

F. W. B.

THIS IS CONCERNIG THE HOUSE BILL OR SENATE BILL 536 UNANIMOUSLY PASSED THE SENATE ON DECEMBER 10, 1997. THIS BILL WOULD ALLOW FOR BAIL HEARING AND ARRAINGMENTS BY TELEPHONE OR IF AN INDIVIDUAL IS INCARCERATED OUTSIDE THE JURISDICTION, ARRAINGMENT BY MAIL OR DOCUMENT FILED WITH THE COURT. IN ALL INSTANCES, THE DEFENDANT MUST BE PERSONALLY PRESENT UPON REQUEST. THEPORTION OF THIS BILL

THAT ALLOWED FOR PLEAS BY TELEPHONE WAS ELIMINATED, THANKS TO TESTIMONY BY SADO MARTY TIEDER.

this COMPLAINT is A MATTER OF RECORD THAT ARE ON FILE AT THE OAKLAND COUNTY COURT HOUSE. THE SENTENCE OF JUDGE BRECK, THIS

IS A ILLEGAL SENTENCE BASE ON THE FACT THIER WAS NO SENATE BILL PASS AT THE TIME OF SENTENCE. THAT is IN THE YEAR 1988, i HAVE BEEN SERVING TIME ILLEGAL, FOR THE FACT OF THE MATTER I WAS NEVER UNDER THE JURISDACTION OF THE COURT IN OAKLAND. THIS I FILE THIS COMPLAINT THE SENATE.

CONCERNING THE SENTENCE OF 88-89719 FH OF JUDGE DAVID BRECK. THE COURT RULE 2.507 CONDUCT OF TRIAL SECTION (H) ? AGREEMENT TO BE IN WRITING. SANTOBELLO V NEW YORK 404 US 257, 260 92 SC.T. 495, 498, 30 L.Ed. 2d 427. PLEA BARGAINING

TO AVOID A COERCIVE EFFECT ON THE DEFENDANT & LOSS OF PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM VOLUNTARINESS OF THE WAIVER. is A MUST THENCE I WAS DENIED A WAIVER OF ARRIGNMENT AND PROMISE TREATMENT IN A PROGRAM CALL RAP. SENTENCE AGREEMENT AND RESENTENCE TO A LONGER TERM OF 1 to 15 WITHOUT THE ARRAIGMENT OF INFORMATION THE SENATE BILL 536 STATE THAT THEIR is A ARRAIGNMENT BY Mii. i WAS PROMISE TREATMENT AND PROMISE ARRAIGNMENT BY MAIL BUT I DIDNIT RECIVE THE ARRAIGNMENT AT ALL. THE ATTORNEY DID SIGN BY NAME WITHOUT MY KNOLWEDLGE OR PERMISSION. THUS: THE CASE is ILLEGAL in NATURE. "THE ATTORNEY COMMISSION DID, WARN THE ATTORNEY DAVID BLINKLEY AND STATE TO USE MY CANDOR IN THE FUTURE. THUS i WAS NEVER ARRAIGNMENT on the information.

the court is without jurisdiction. see attachment of evidence i have file this complaint with the supreme court administration they take on action in this matter. i am unable with the skill in law to file this case, and i did try with the knowledge of the issue. but i did not prevail. so i file this complaint with the senate. see exhibit from the FBI AND OTHER STATE REPRESENTATIVE

office. i still need your help as statement make from the senate letter that you should help with the assistance i need that is a attorney. under the code of us 18 USC 3006 i do need expert help from your office. i need further assistance on this issue please of house bill 536 i was sentence on 12-88 & 89 OCT. WITH a arrainment by mail and forgery of signature on promise to get treatment at call rap. violaiton of senate bill 536 THEIR ARE at less a 1000people sentence by arraignment by mail in oakland county. in 1989 - 88-87 CHECK FILE OF COURT

[i declare under the penalty of perjury the foregoing is true



SAMUEL BAINES 134408 3 c-12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL BAINES,

Petitioner,

Exhibit C

v

CIVIL DOCKET NO. 99CV-74594-DT
HONORABLE PATRICK J. DUGGAN

FRANK ELO,

Respondent.

NOTICE OF FILING PARTIAL RULE 5 MATERIALS

TO: 134408 Samuel Baines
Adrian Temporary Correctional Facility
2727 East Beecher Street
Adrian, MI 49221

PLEASE TAKE NOTICE that a copy of Petitioner's Partial Rule 5 Materials is being served upon the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, as set forth in the attached Index of Partial Record. The state court records relating to Petitioner's conviction for which this petition is filed were destroyed in the February 15, 1999 fire at the G. Mennen Williams Building, Lansing, Michigan. Attempts to recreate the file by obtaining copies from the Prosecutor's office have failed as their record is no longer available.

Respectfully submitted,

JENNIFER M. GRANHOLM

Attorney General

Vincent Leone
Vincent Leone (P24093)

Assistant Attorney General
Attorneys for Respondent

Habeas Corpus Division
120 North Washington Square
Lansing, Michigan

Dated: August 7, 2000

Telephone: (517) 373-4875

STATE OF MICHIGAN

SUMMONS AND COMPLAINT



EXHIBIT

JURISDICTION:

MEMORANDUM EXHIBIT D

1. M.C.R 6.104 arraignment on the Warrant or Complaint

(A) Arraignment without unnecessary delay.

Appearance within the next 14 days.

I of 1 is a manifestation of violation, of law. I have not been or had arraignment of Complaint on cause number 88-8971FH and was not present at the hearing.

I was never under jurisdiction of the Circuit Court.

Violation of 14 day requirement of law, M.C.R. 6.104(E)

(2) and Complaint filed at or before the time of arraignment was not done without the 14 day time limit of statue of limitation of MCR 6.104

(B) In subrule (E) 2, was a violation of my rights. I was given 3 different dates for the arraignment. I was not present at any of my said arraignments nor did I sign for a Waiver of Arraignment. A manifest violation of Rule 6.104 for arraignment of the Warrant and or Complaint

2. Violation of General Provisions, presence of Defendant Rule 43 (A) 2 of 2 c. Violation of the fourteenth amendment (A)

Presence is required. The Defendant shall be present at the arraignment at the time set by the Court (18 4208 William v People of the state of New York, 337 U.S. 241 250, 251 69 S.ct 1079, L.ED 1337 1949).

The court said that the fourteenth amendment was not to be treated "As a uniform command that courts throughout the nation abandon their age old practice of seeking information from outside of court sources to guide their judgement toward a more enlightened and just sentence (see Hoover v United States 268, F.2d 787, 790 CA. 10, 1959).

3. MSA 28.445 (Forgery of records and other instruments venue)

Sev 248 (1) Any person who shall falsely make, alter, forge or counterfeit any public record shall be in violation of law. The forgery of my signature for a waiver of arraignment by my

The Circuit Court
for the Sixth Judicial Circuit Court
OFFICE OF THE COURT ADMINISTRATOR

1300 N TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

EXHIBIT E

To: Samuel Baines Date: 8-15-01 Case No.: 1988-089719-FH

We have received your letter of request. The item(s) checked below apply to your case.

Enclosed is a copy of your Circuit Court File Docket Transcript(s)

We need your Circuit Court case number to review your request.

Your request for transcript(s)/file appears to be untimely. We can not comply with your request unless you show you are entitled to the information under the Michigan Court Rules.

Our records reflect you were sent a complete copy of your transcript(s)/file. Under the Michigan Court Rules, you must prove why you should receive another copy.

Please contact your attorney.

The information you requested is not a part of the court file.

Complying with your request would constitute legal advice. We are prohibited by law from providing legal advice.

To obtain copies of your transcript(s)/file, you must state *specifically* why you need them. For further information, see the Michigan Court Rules.

Please state *specifically* what type of post-conviction relief you are seeking.

We do not provide pre-sentence information reports (PSI). After sentencing, copies of your PSI are sent directly to your prison file. You may ask prison officials or counselors for permission to review the PSI report located in your prison file.

Prison Legal Services may be of some assistance to you. You may reach them at: P.O. Box 828, Jackson, MI 49201.

Other As we have indicated to you on prior occasions, you have previously received your complete court file, a docket, and all transcripts that pertain to your case. We have enclosed copies of the proofs of mailings that reflect this. Our records reflect that your arraignment was done by mail; your Motion for Relief from Judgment was denied. We can be of no further assistance to you.

NO. 00-00-2369

UNITED STATES COURT OF APPEAL
FOR THE SIXTH CIRCUIT

SAMUEL BAINES, APPELLATE

BAINES V ELO

CASE No. CR-88-89719-FH

v

FRANK ELO, ET. AL, REPSONDENT

AFFIDAVIT
STATEMENT OF FACT

MCLA 768.36; code of criminal procedure section 5, plea in general record support petitioner Samuel Baines has argument that his guilty plea was an illusion because it was based upon a promise that he would receive treatment in a RAP drug program based upon a due process with regard to required findings of a plea of guilty. Plea was induced by the unfulfilled promise that the petitioner would receive treatment for drugs and alcoholic addiction. This means that the guilty plea of 88089719FH, enhanced by 96-7813-01, was involuntary because it promised treatment as part of the sentencing requirements. The RAP House Drug Facility is federaly funded. Judge D. Breck sentenced and ordered prosecution to oversee the transfer. He did facilitate the determination of qualified individuals with disability; Mulley v Briggs 475 US 335 106 S.Ct. 1092, 89 L.Ed. 271 (1986). The Department of Corrections has a panel that was set up by the legislature exclusively for the treatment for drug or alcohol abuse in a community setting.

The title object provision of the Michigan Constitution, because the statut embraces more than one object and the object embraced in its title or the general title of the code of criminal procedure. The guilty statut violates re-enactment of the published provision of the Michigan Constitution because the statut expressly awfodred provision of mental health codes without re-enacting and republishing that act; People v Mack

(1981) 305 N.W.2d 264, 104 Mich. App. 560 Section 16 treatment in general, a sentence to a community treatment in case 88-89719FH enhanced to 96-7813-01 is in very most unconstitutional of ADA and due process. Once the moving party presents a prima facie showing that he is entitled to judgment as a matter of law, the party opposing the affidavit or denial in response or pleading. But must set forth specific facts showing that genuine issues for trial exist. Anderson 477 U.S. 256-57, 106 S.Ct. at 2514-2415. Deliberate indifference of MDOC raises the 8th amendment violation that would entitle a petitioner the claim of deliberate indifference.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Date: _____



Samuel Baines

OFFICIAL COURT OF APPEALS CAPTION FOR 00-2369

SAMUEL BAINES

Petitioner - Appellant

v.

FRANK ELO

Respondent - Appellee

BRIEF IN SUPPORT

PURSUANT TO LAKIN V STINE 44F. SUPP. 2d 897 (1999) THE FACT THAT DANA CARRON WAS NOT HAVING A MEANINGFUL ATTORNEY CLIENT RELATIONSHIP . WITHOUT COMMUNICATION? THE ATTORNEY CAN ONLY POSTURE AS ONE . THE COMMUNICATION DERIVES AN ATTORNEY A NECESSARY ELEMENT COMPOSING A LAWYER . REQUEST FOR A NEW COUNSEL AND LETTER TO THE APPEAL COURT WAS NOT ANSWER . THE EXACT LETTER IS ATTACHMENT AS EXHIBITS . REQUEST FOR A NEW COUNSEL CONCLUSIONS MADE SUBSTANTIAL EFFORT PRIOR TO THE COMMENCEMENT OF APPEAL BUT I DID NOT SECURE RESPONSIVE COUNSEL FOR I DID TRY . I CALLED SEVERAL TIMES BUT THE ATTORNEY WOULD NOT ACCEPT. I WROTE LETTERS THE ONLY ONE HE ANSWERED WAS FOR A NEW CLIENT. THIS IS THE ONLY LETTER I RECIEVE BEFORE THE APPEAL . I ASK FOR HELP AND HE WOULD NOT GIVE EXPLAINT THE PURPOSE OF OR REASON WHY HE WOULD NOT HELP .

| I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

SAMUEL BAINES

DATE:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 00-2369

Filed: March 19, 2001

SAMUEL BAINES

Petitioner - Appellant

v.

FRANK ELO

Respondent - Appellee

MANDATE

Pursuant to the court's disposition that was filed 2/9/01
the mandate for this case hereby issues today.

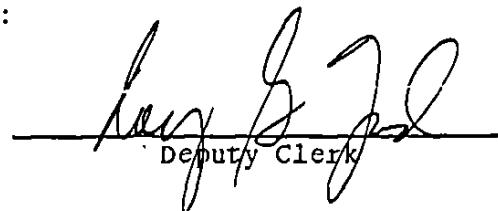
A True Copy.

FRAP 39 COSTS: NONE

Attest:

Filing Fee\$
Printing\$

Total\$



Deputy Clerk

1999
1.9.99
3.19.99
[CLOSED]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN U.S. DIST. COURT CLERK
SOUTHERN DIVISION DIST. MICH.

SAMUEL BAINES,

Petitioner,

v.

STANLEY ADAMS,

Respondent.

1999 MAR 19 A 10:37

Civil No. 98-40240-FL
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

EXH. W
A

ORDER OF SUMMARY DISMISSAL

Samuel Baines, ("petitioner"), presently confined at the Riverside Correctional Facility in Ionia, Michigan, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, filed pro se, petitioner challenges his conviction on one count of retail fraud, first-degree, M.C.L. 750.356c; M.S.A. 28.588(3) and being a, fourth felony habitual offender, M.C.L. 769.12; M.S.A. 28.1084. The State of Michigan has brought a motion to dismiss, claiming that petitioner has failed to exhaust his state court remedies. For the reasons stated below, the motion to dismiss is granted and the petition for writ of habeas corpus is dismissed without prejudice.

I. Background

caption introduction

Petitioner was convicted in the Detroit Recorder's Court of retail fraud, first-degree and of being a fourth felony habitual offender on January 22, 1997 before Judge John Patrick O'Brien. He was sentenced to three (3) to fifteen (15) years in prison. The

Michigan Court of Appeals denied leave to appeal on October 28, 1997.¹ The Michigan Supreme Court denied leave to appeal on May 28, 1998.² Respondent now urges this Court to dismiss the petition on the grounds that petitioner has presented a mixed petition containing both exhausted and unexhausted claims. Petitioner has failed to respond to the motion to dismiss or present any evidence to this Court that all of the claims in his petition have been exhausted with the Michigan state courts.

II. Discussion

The petition for writ of habeas corpus must be dismissed without prejudice because the petition contains several claims which petitioner has failed to exhaust in the Michigan courts prior to the filing of this habeas petition in federal court.

A habeas petitioner must fairly present the substance of each federal constitutional claim in state court before raising a claim in federal court. 28 U.S.C. § 2254(b) and(c); *Picard v. Connor*, 404 U.S.270,275-278; 92 S.Ct. 509; 30 L.Ed. 2d 438 (1971). The requirement of exhaustion of state remedies as a prerequisite to habeas corpus review is designed to protect the state court's role in enforcement of federal law and to prevent disruption of state judicial proceedings by the federal courts. *Velez v. People of the State of New York*, 941 F. Supp. 300, 309 (E.D.N.Y. 1996). "A

¹ Michigan Court of Appeals Docket # 205188.

² Michigan Supreme Court Docket # 111168.

petitioner 'fairly presents' his claim to the state courts by citing a provision of the Constitution, federal decisions using constitutional analysis, or state decisions employing constitutional analysis in similar fact patterns." *Levine v. Torvik*, 986 F.2d 1506, 1516 (6th Cir. 1993); cert. denied, 509 U.S. 097, 113 S.Ct. 3001; 125 L. Ed. 2d 694 (1993). It is the petitioner's burden to prove exhaustion of state remedies. *Rust v. Zent*, 17 F.3d 155,160 (6th Cir. 1994).

Proof

A prisoner confined pursuant to a Michigan conviction must raise each habeas issue in the Michigan Court of Appeals and in the Michigan Supreme Court before seeking federal habeas corpus relief. *Hafley v. Sowders*, 902 F. 2d 480, 483 (6th Cir. 1990); *Grant v. Rivers*, 920 F. Supp. 769, 779 (E.D. Mich. 1996). A habeas petitioner must normally present his or her claims to the state's highest appellate court to exhaust his or her state remedies. *Daniel v. Overton*, 845 F. Supp. 1170, 1173 (E.D. Mich. 1994).

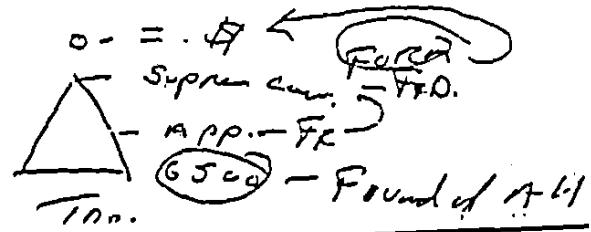
In the present case, the petition for writ of habeas corpus must be dismissed because petitioner has failed to exhaust three out of the four claims in his petition with the state courts. A habeas petition containing both exhausted and unexhausted claims must be dismissed in its entirety. *Nasr v. Stegall*, 978 F. Supp. 714, 716 (E.D. Mich. 1997). If a habeas petition contains both exhausted and unexhausted claims, the general rule is to dismiss such mixed petitions so as to allow for the exhaustion of the

↙

unexhausted claims. *Barker v. Yukins*, 993 F. Supp. 592, 596 (E.D. Mich. 1998). Petitioner must first exhaust these remaining claims in the Michigan appellate courts before this Court can entertain his petition for writ of habeas corpus.

Petitioner's method of exhausting these claims in the state courts would be by means of filing a motion for relief from judgment with the Detroit Recorder's Court under M.C.R. 6.501. A defendant may request the appointment of counsel to assist with the motion for relief from judgment and the trial court is required to appoint counsel, if the court requires oral argument or an evidentiary hearing. M.C.R. 6.505. A denial of a motion for relief from judgment is reviewable by the Michigan Court of Appeals upon the filing of an application for leave to appeal within one year from the denial of the motion for relief from judgment. M.C.R. 6.509; M.C.R. 7.205(F). Any decision of the Michigan Court of Appeals may be reviewed by filing an application for leave to appeal with the Michigan Supreme Court. M.C.R. 7.302. A defendant's criminal conviction is reviewable in accordance with M.C.R. 6.500 et. seq. where the defendant fails to pursue an appeal by right or when the time limitation for filing an application for leave to appeal has expired. *People v. Caston*, 228 Mich. App. 291, 297-298; 579 N.W. 2d 368 (1998).

Because petitioner still has post-conviction remedies available to him, he is unable to demonstrate that it would be impossible or futile for him to exhaust his state court remedies.



Accordingly, this Court will dismiss the petition without prejudice to allow petitioner to exhaust the remaining issues in his petition with the Michigan state courts.

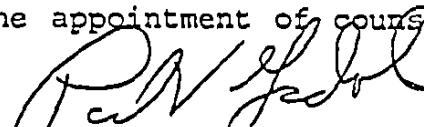
Although the issue is now moot, this Court will grant petitioner's motions to amend the petition and annex exhibits. With respect to petitioner's motion for reconsideration of this Court's Order Denying the Appointment of Counsel, this Court will deny the motion for reconsideration because petitioner merely presented the same issues in his motion for reconsideration as the ones presented in his original request for the appointment of counsel. A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Czajkowski v. Tindall & Associates, P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). U.S. Dist.Ct. Rules, E.D. Mich. 7.1(h).

III. ORDER

Based upon the foregoing, IT IS ORDERED that the petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE.

It is further ORDERED that petitioner's motion to amend and attach exhibits is GRANTED.

It is further ORDERED that petitioner's motion for reconsideration on his motion for the appointment of counsel is DENIED.



HON. PAUL V. GADOLA
UNITED STATES DISTRICT COURT

3/18/99

DEBBIE STABENOW
MICHIGAN

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-2204

June 5, 2002

Samuel Baines #134408
Pugsley Correctional Facility
7401 Walton Road
Kingsley, Michigan 49649

Thank you . . .

... for contacting me regarding the Michigan Department of Corrections. I appreciate you taking the time to share your concerns with me.

Since the issue you raise is under the jurisdiction of the Michigan State Legislature, I have forwarded your letter to the Michigan Legislative Corrections Ombudsman. This office was established to serve as a liaison between the public and the Michigan Department of Corrections.

Thank you again for contacting me. If you have questions or need further assistance on this issue, please contact your State Senator from your home district.

Sincerely,



Debbie Stabenow
United States Senator

DS:sps
cc: Michigan Legislative Corrections Ombudsman